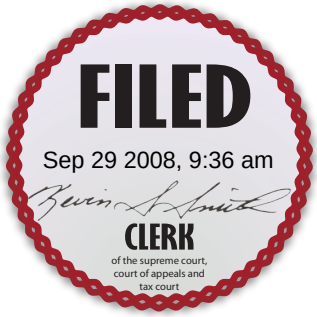

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IN THE
COURT OF APPEALS OF INDIANA

JASON J. GREEN,	)	
	)	
Appellant-Petitioner,	)	
	)	
vs.	)	No. 52A02-0712-CV-01126
	)	
LAURA S. GREEN,	)	
	)	
Appellee-Respondent.	)	

APPEAL FROM THE MIAMI CIRCUIT COURT
The Honorable William C. Menges, Jr., Special Judge
Cause No. 52C01-0008-DR-354

September 29, 2008

MEMORANDUM DECISION ON REHEARING- NOT FOR PUBLICATION

VAIDIK, Judge

Following our opinion in *Green v. Green*, 889 N.E.2d 1243 (Ind. Ct. App. 2008), Father petitions for rehearing. We grant rehearing for the limited purpose of clarifying that the previous version of the relocation-based child custody modification statute applies in this case. We affirm our original opinion in all respects.[1]

In our original opinion, we noted that Indiana Code §§ 31-17-2-4 and -23, which address relocation-based child custody modifications, were repealed on July 1, 2006, and replaced with Indiana Code chapter 31-17-2.2. *Green*, 889 N.E.2d at 1248 (citing Pub. L. No. 50-2006, § 7 (eff. July 1, 2006)). However, relying on *Browell v. Bagby*, 875 N.E.2d 410, 412-13 (Ind. Ct. App. 2007), *reh'g denied, trans. denied*, we found that Indiana Code §§ 31-17-2-4 and -23 nevertheless applied because Mother and Father filed their motions in 2005. *Green*, 889 N.E.2d at 1248. On rehearing, Father, who now has a new attorney, contends that we should have applied Indiana Code chapter 31-17-2.2 because the Indiana Supreme Court held so in *Baxendale v. Raich*, 878 N.E.2d 1252 (Ind. 2008). Father quotes the following from *Baxendale*, representing it to be our Supreme Court's holding:

> An amendment to a child modification statute is the controlling authority for a custody modification hearing taking place after the amendment's effective date *irrespective of whether the custody modification petition was filed before the amendment's effective date* (emphasis added).

Appellant's Reh'g Br. p. 2 (quoting *Baxendale*, 878 N.E.2d at 1256 n.4).

However, footnote 4 from *Baxendale* contains no such holding from our Supreme Court. Rather, footnote 4 recognizes that there is a split in the Court of Appeals

[1] We hereby deny Mother's attorney's Motion for Leave to Withdraw Appearance.

regarding when to apply the old or new statute. The language that Father quotes is actually from *Wiggins v. Davis*, 737 N.E.2d 437, 440 n.1 (Ind. Ct. App. 2000), and supports Father's position that the new statute should apply. However, footnote 4 also cites and quotes *Browell* for the proposition that the old statute should apply.[2] Our Supreme Court in *Baxendale* did not resolve the split because the parties did not even argue that the old statute should apply. 878 N.E.2d at 1256 n.4.[3]

Finally, we note that Father attempts to raise an issue on rehearing that was not raised in his original brief, specifically, that the trial court erred in admitting into evidence the deposition of licensed social worker Raymond Franklin. Because this issue is raised for the first time on rehearing, it is waived. *See Massey v. Conseco Servs., L.L.C.*, 886 N.E.2d 581, 582 (Ind. Ct. App. 2008), *trans. denied*.

MAY, J., and MATHIAS, J., concur.

[2] After *Baxendale*, our Supreme Court denied transfer in *Browell*.

[3] We remind counsel for Father that credibility is important before a court. When representations are made about a case, especially a case in which counsel was involved, *see* Appellant's Reh'g Br. p. 2 n.1 (noting that counsel represented the father in *Baxendale*), and those representations turn out to be wrong, counsel instantly loses his credibility before the court.